FILED

JUN 18 2003

CATHY A. CATTERSON
U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| In re: JTS CORPORATION,<br><br>Debtor,<br><br>----------<br><br>SUZANNE L. DECKER, Trustee,<br><br>Appellant,<br><br>v.<br><br>AURORA NATIONAL LIFE ASSURANCE COMPANY; KEITH L. POWELL; MERRILL LYONS; MICHAEL PASTORE,<br><br>Appellees. | No. 02-15551<br><br>BAP No. NC-01-01071-PKMa<br><br>MEMORANDUM* |
| In re: JTS CORPORATION,<br><br>Debtor,<br><br>---------- | No. 02-15591<br><br>BAP No. NC-01-00171-PKMa |

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

MICHAEL PASTORE,

Appellant,

v.

SUZANNE L. DECKER, Trustee,

Appellee.

Appeal from the Ninth Circuit

Bankruptcy Appellate Panel
Perris, Klein and Marlar, Bankruptcy Judges, Presiding

Argued and Submitted May 16, 2003
San Francisco, California

Before: CANBY, KLEINFELD, and RAWLINSON, Circuit Judges.

**1.** The Bankruptcy Appellate Panel ("BAP") did not err in concluding that the Debtor violated the injunction entered by the California Superior Court when the Debtor changed the named beneficiaries under the Policies.

**2.** Nor did the BAP err in determining that violation of the injunction was not a "claim" within the meaning of 11 U.S.C. § 101(5). Under California law, the remedy for violation of an injunction is contempt, which does not give

the aggrieved party a *right* to payment. *See H.J. Heinz, Co. v. Superior Court*, 42 Cal. 2d 164, 173-74 (1954); *see also Brewster v. Southern Pacific Transportation Co.*, 235 Cal. App. 3d 701, 711 (1991) ("[A] court has no authority to award compensatory damages in a contempt action.") (citation omitted).

**3.** The BAP did not err in concluding that the cash reserves and death benefits under the policies were not property of the estate. *See* 11 U.S.C. § 541(d) (stating that property of the estate does not include "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest[.]"); *see also Liberty Mut. Ins. Co. v. Official Unsecured Creditors' Committee Of Spaulding Composites Company, Inc. (In re Spaulding Composites, Inc.)*, 207 B.R. 899, 906 (9th Cir. B.A.P. 1997) ("[W]hen a debtor corporation owns a liability policy that exclusively covers its directors and officers, we know . . . that the proceeds of that . . . policy are not part of the debtor's bankruptcy estate.") (citation omitted).

**4.** Pastore may not avail himself of offensive collateral estoppel in this action because the issue he seeks to preclude from relitigation was not decided in

the state court action. *See Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001). In addition, Pastore has offered no explanation for his failure to join the earlier action. *See Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 330-31 (1979).

**AFFIRMED**.